

REMARKS/ARGUMENTS

1.) Claim Amendments

Claims 2-13 and 15-21 are pending in the application. The Applicants have amended claims 2, 4-6, 13, 15, and 17. Claims 1 and 14 have been canceled. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

2.) Claim Rejections – 35 U.S.C. § 102(e)

On Page 2 of the Office Action, the Examiner rejected claims 1-4, 15, and 18 under 35 U.S.C. § 102(e) as being anticipated by Tiburtius, et al. (US 6,917,613). The Applicants have canceled claim 1 and rewritten claim 5 in independent form to include the limitations of base claim 1. Claims 2 and 4 have been amended to depend from amended claim 5. The Applicants have also amended independent claim 15 to include a limitation similar to the limitation of claim 5. Claim 18 depends from amended claim 15.

For the above reasons, the Applicants contend that the novelty rejection has been overcome with respect to claims 2-4, 15, and 18. Therefore, the withdrawal of the rejection under § 102(e) is respectfully requested.

As a result, all of the currently pending claims stand rejected under 35 U.S.C. § 103(a), as discussed below.

3.) Claim Rejections – 35 U.S.C. § 103(a)

On Page 4 of the Office Action, the Examiner rejected claims 5-13 under 35 U.S.C. § 103(a) as being unpatentable over Tiburtius, as applied to claim 1 above, and in view of Ejzak. On Page 7 of the Office Action, the Examiner rejected claims 16, 17, 20, and 21 under 35 U.S.C. § 103(a) as being obvious over Ejzak in view of Tiburtius. On Page 10 of the Office Action, the Examiner rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Tiburtius, as applied to claim 15 above, and in view of Ejzak.

The Applicants contend that Tiburtius is disqualified as prior art under 35 U.S.C. § 103(c), because it is commonly owned with the instant application. More specifically, MPEP 706.02(I)(1) states:

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." This change to 35 U.S.C. 103(c) applies to all utility, design, and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 CFR 1.53(b), continued prosecution applications filed under 37 CFR 1.53(d), and reissues.

The instant application was filed after November 29, 1999. Applicants note that the instant application and Tiburtius were commonly owned by Telefonaktiebolaget LM Ericsson at the time the invention was made. The ownership information for Tiburtius is shown in an assignment recorded with the U.S. Patent and Trademark Office at reel 0011663, frame 0723. The ownership information for the instant application is shown in an assignment recorded with the U.S. Patent and Trademark Office at reel 014832, frame 0141.

As a result, all of the requirements of 35 U.S.C. 103(c) have been met, and Tiburtius is disqualified as a prior art reference in the instant application. The Examiner has acknowledged that the amendments made to the claims in the previous response were sufficient to distinguish the claimed invention over Ejzak. Therefore, Applicant respectfully requests the withdrawal of the rejection and the issuance of a Notice of Allowance for pending claims 2-13 and 15-21.

4.) Prior Art Not Relied Upon

On page 12 of the Office Action, the Examiner stated that the prior art made of record and not relied upon is considered pertinent to the Applicants' disclosure. However, Applicants' review of these references has not revealed any teaching or suggestion of the claimed invention.

5.) Conclusion

In view of the foregoing remarks, the Applicants believe all of the claims currently pending in the Application to be in a condition for allowance. The Applicants, therefore, respectfully request that the Examiner withdraw all rejections and issue a Notice of Allowance for claims 2-13 and 15-21.

The Applicants request a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



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